

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000240

12/17/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

JASON C ADAMS

v.

REBECCA ELIZABETH COHLMAN

MARTIN A CREAVER

CHANDLER CITY-MUNICIPAL
COURT
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

MINUTE ENTRY

CHANDLER CITY COURT

Cit. No. #01-P-857446; #01-P-857447; #01-P-857448

Charge: CT 1. DUI-LIQUOR/DRUGS/VAPORS/COMBO; CT 1. DUI W/BAC OF .10
OR MORE; CT 1: FAIL TO STOP/ACCID/UNATT VEH.

DOB: 06/10/51

DOC: 11/16/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since oral argument on November 18, 2002. This Court has considered and reviewed the record of the proceedings from the Chandler City Court, and the Memoranda submitted by counsel.

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Appellant, Rebecca Elizabeth Cohlman, was convicted after a trial of three crimes: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); (2) Driving with a Blood Alcohol Content of .10 or Greater, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); (3) Failure to Stop and Render Aide at an Accident, a class 3 misdemeanor, in violation of A.R.S. Section 28-664. Appellant entered pleas of Not Guilty and the matter proceeded to trial before the Honorable Ronald Carp, Chandler Municipal Court Judge, on March 13, and 14, 2002. Appellant was found guilty of all charges. Appellant has filed a timely Notice of Appeal in this case.

Appellant raises three issues in her memorandum: (1) that the State failed to provide sufficient evidence that she had consumed any alcohol prior to or during driving an automobile; (2) that the trial court erred in refusing to allow her to present a necessity defense; and (3) that the trial court mistakenly allowed a juror to sit on the panel who worked with one of the State's witnesses.

By her failure to object, Appellant had waived the first and final issues.¹

The second issue raised by Appellant that the trial court erred when it refused to allow Appellant to testify why she left the scene of the accident appears to have occurred after a bench conference that was held off the record. It is Appellant's obligation to ensure that a full record is made on issues pertinent to her appeal. When matters are not included within the record on appeal, an appellate court must presume the missing portion of the record supports the decision of the trial judge.²

In this case, Appellant contends that the trial court erroneously precluded her necessity defense offered pursuant to A.R.S. Section 13-417(A). Appellee argues that the necessity defense was not relevant.³ The record reflects that the reason the trial judge precluded portions of Appellant's testimony is because that testimony was not noticed as a defense.⁴ Rule 15.2(b), Arizona Rules of Criminal Procedure, requires that the Defendant provide the prosecutor with a written notice specifying all defenses within ten (10) days of the prosecutor's disclosure. Defenses not noticed or disclosed may be precluded. Despite counsel's arguments concerning relevance, it is clear from the record that the trial judge precluded Appellant's proposed necessity defense testimony because that defense was not noticed. The trial court did not err.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Chandler City Court in this case.

¹ *State v. Lefevre*, 193 Ariz. 385, 972 P.2d 1021 (App. 1999).

² *State v. Mendoza*, 181 Ariz. 472, 891 P.2d 939 (1995); *State v. Zuck*, 134 Ariz. 509, 658 P.2d 162 (1982).

³ Appellee's Memorandum, at page 2.

⁴ R.T. of March 14, 2002, at page 117.

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IT IS FURTHER ORDERED remanding this matter back to the Chandler City Court for all further and future proceedings in this case.